

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AT
TIPTUR**

DATED THIS THE 13TH DAY OF JUNE, 2023

**PRESENT: SMT. DEEPA V., B.A.L., L.L.B.,
PRINCIPAL CIVIL JUDGE
TIPTUR**

O. S. No. 335/2016

STATUS OF PARITIES IN	
SUIT	APPLICATION ON I.A. NO.XII
Plaintiff - Sri. Raviprakash Vs	Applicant / Defendant No.1 - Smt. Sowbhagyamma Vs.
Defendants - Smt. Sowbhagyamma & Ors.	Opponents / Plaintiff - ... Sri. Raviprakash

ORDER ON I.A.NO.X

The defendant No.1 filed I. A. No. X under Order VII Rule XI(d) of CPC for rejection of plaint as the subject matter of suit is barred by law.

2. Description of Application Property: All that piece and parcel of converted property bearing Khata No. 131,

measuring East to West 60 feet and North to South 40 feet total measuring 2400 sq feet situated at Rajathradripuram Village, Kibbanahally Hobli, Tiptur Taluk consisting of house along with vacant land on the western side and bounded on East by Parvathamamma's Property; West by Sambhasivaiah's land, North by Parvathamamma's land and South by B H Road (**hereinafter to as the Suit Property**).

3. In the affidavit, the defendant No.1 sworn to that originally the land bearing Survey No. 182 measuring 04 guntas was belonging to one Sri. Kempaiah S/o Govindaiah. The said Sri. Kempaiah converted the said land into non-agricultural land and sold in favour of Sri. H. T. Sambashivaiah S/o Sri. Thimmegowda under registered sale deed dated 08.07.1985. Thereafter, the said Sri. H. T. Sambashivaiah sold the property in favour of one Sri. H. S. Venkatesh S/o Siddalingappa under registered sale deed dated 20.05.1998. The said Sri. H. S. Venkatesh sold the site property in favour of plaintiff under registered sale deed dated 11.09.2006.

ii. In both the sale deeds dated 20.05.1998 and 11.09.2006, there is a mistake in respect of measurement of site property and it has been wrongly typed as East – West 40 feet and North – South 60 feet instead of East – West 60 feet and North – South 40 feet. In the instant case, the plaintiff sought for rectification of the sale deed dated 11.09.2006 unless the earlier sale deed dated 20.05.1998 has been rectified, the registered sale deed dated 11.09.2006 cannot be rectified.

iii. According to Sec. 17 of Limitation Act, the present suit is barred by time, since the 1st sale deed dated 20.05.1998 and this suit has been filed after lapse of 18 years from the date of sale deed.

iv. The plaintiff has failed to allege whether the measurement in earlier sale deed has been effected either by fraud or by mistake. Therefore, the application is liable to be dismissed. The details of fraud have not been alleged in the plaint U/Order 6 Rule 4 of CPC. In the above mentioned circumstances, the plaint is liable to be rejected. No hardship will be caused to the plaintiff, if this application is allowed and sought for rejection of plaint.

4. The said application is resisted by the plaintiff that:

i. The application is not maintainable in law or in facts and the same is liable to be dismissed in limine.

ii. The application is not at all sustainable as it has been filed after a lapse of 7 years.

iii. The averments made in the paragraph No.7 of affidavit is false and the same does not arise for consideration.

iv. The defendants have admitted the execution of sale deed that it was executed by one Sri. Sambashivaiah in favour of Sri. K. Venkatesh – defendant No.4 and the sale deed executed by the defendant No.4 in favour of plaintiff in respect of suit property and the said averments are very much contrary to their written statement as such the application is devoid of merits and the same is liable to

be dismissed and thereby, sought for dismissal of the application.

5. In support of the contentions raised by the defendant No.1, the learned counsel for defendant No.1 relied upon the following decision, reported in **2021 (1) KCCR 955** in the case of **Sri. U. Manjunath Rao Vs. U. Chandrashekar and Another.**

6. Per contra, in support of the objection raised by the plaintiff, the learned counsel for plaintiff relied upon the following decisions, reported in :

1. **2008 (1) KCCR 308** in the case of **Sri. Vinayaka Residents Welfare Association Vs. M. Ramachandra and Others.**
2. **2008 (1) KCCR 232** in the case of **Mrs. Anuradha Shenoy Vs. N. Nanjappa.**
3. **2008 (1) KCCR 311** in the case of **Sri. K. P. Subramanya Vs. Smt. B. Gowramma and Others.**
4. **2022 (2) KCCR 1811** in the case of **Sri. B. Sumithra Rao and Others Vs. Sneha and Others.**
5. **2022 (3) KCCR 2166** in the case of **Sri. Sheshappa Vs. Gangama and Others.**

7. Heard the counsel for the defendant No.1 and the plaintiff and perused the materials available on record.

8. In light of the above rival contention of the parties, the following points are arises for the consideration of this court are;

1. Whether the suit appears from the statement in the plaint to be barred by law?
2. What order ?

9. The Court's answer to the above points are as under:

Point No.1: In the affirmative

Point No.2: As per final order for the following;

REASONS

10. The plaintiff filed the suit for direction to the defendants to execute the rectification in favour of plaintiff by rectifying the mistake in the sale deed as per the measurement mentioned in the suit property and other consequential reliefs.

11. The main question is whether the plaint filed by the plaintiffs could have been rejected by invoking Order VII Rule 11(d) of the CPC ? Indeed, Order VII Rule 11 of the CPC gives ample power to the Court to reject the plaint, if from the averments in the plaint, it is evident that the suit is barred by any law including the law of limitation.

12. This Court places reliance in the case of RAM PRAKASH GUPTA VS. RAJIV KUMAR GUPTA & ORS REPORTED IN (2007) 10 SCC 59, wherein, it was observed in paragraph 13 and 14 as follows:

"13. As per Order 7 Rule 11, the plaint is liable to be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9.

14. In Saleem Bhai v. State of Maharashtra[(2003) 1 SCC 557] it was held

in paragraph 9 with reference to Order 7 Rule 11 of the Code that

“the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power ... at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial”.

For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order 7 of CPC, the averments in the plaint are germane; the pleas taken by the defendants in the written statement or otherwise would be wholly irrelevant at that stage.

13. This court places reliance in the matter of MADANURISRI RAMA CHANDRA MURTHY VS. SYED JALAL reported in (2017) 13 SCC 1744 wherein paragraph 7 held as follows:

“The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading

of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.

14. Keeping in mind the well settled legal position, this court has now proceeded to analyze the averments in the plaint, as filed by the plaintiff, to discern whether it was a fit case for rejection of plaint under Order VII Rule 11(d) of the CPC.

15. It appears from the plaint that the plaintiff filed this suit by invoking

Section 26 in The Specific Relief Act, 1963

26. When instrument may be rectified.—

[\(1\)](#) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956) applies] does not express their real intention, then—

[\(a\)](#) either party or his representative in interest may institute a suit to have the instrument rectified; or

[\(b\)](#) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

[\(c\)](#) a defendant in any such suit as is referred to in clause (b), may, in addition to

any other defence open to him, ask for rectification of the instrument.

[\(2\)](#) If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

[\(3\)](#) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

[\(4\)](#) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed: Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

Coupled with Section 17 of Limitation Act 1963 which reads as under

17. Effect of fraud or mistake.—

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him, the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production: Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at

the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order: Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

Thus, from the aforesaid section makes it clear that if there is a mutual mistake or fraud, the instrument could be rectified but as per plaint averment in paragraph

No. 5 and 9 that the vendor of plaintiff namely Sri Venkatesh S/o. Late Siddalingappa (defendant No. 4) purchased the Khata No. 131 total measuring 2400 square feet i.e., East to West 40 feet and North to South 60 feet through sale deed dated 20-05-1998 from one Sri H. T. Sambashivaiah S/o. Late THimmegowda, defendant No. 2 and 3 and the same has been conveyed to the plaintiff by way of registered sale deed dated 11/09/2006. Such being the case, the defendant No. 4 has conveyed the said measurement to the Plaintiff what he possessed under the registered instrument dated 20/05/1998 and cannot convey what he was not possessed on the maxim of **Nemo dat quod non habet** that “**no one can transfer a better title than he himself possesses**” and the said principle is appreciated in the case of **V.Chandrasekaran & Anr vs Administrative Officer & Ors reported in Laws(SC) 2012-9 -27.**

16. There was no demand from the defendant No. 4 for rectification of measurement in the sale deed East to West 40 feet and North to South 60 feet to East to West 60 feet and North to South 40 feet from 20/05/1998 i.e., from the date of registration of instrument. He was in possession of Khata No. 131 total measuring 2400 square feet i.e., East to West 40 feet and North to South 60 feet situated at Rajathradripuram Village, Kibbanahally Hobli, Tiptur Taluk consisting of house along with vacant land on the western side and bounded on East by Parvathamma's Property; West by Sambhasivaiah's land, North by Parvathamma's land and South by B H Road for

not less than 9 years. Added to which, the plaintiff purchased the Khata No. 131 total measuring 2400 square feet i.e., East to West 40 feet and North to South 60 feet situated at Rajathradripuram Village, Kibbanahally Hobli, Tiptur Taluk **on 11/09/2006** but filed this suit only on 09/11/2016 after 11 years from the date of purchase.

17. It ought to be seen that s per Order 7 Rule 6 of CPC makes it clear that “grounds of exemption from limitation law where the suit is instituted after the expiration of period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed, provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint”. **On** perusal of pleadings the plaintiff has not stated the ground of exemption on the point of limitation when the sale deed of defendant No. 4 was taken place on 20/05/1998 and the plaintiff on 11/09/2016 except contending that in the year August 2016 the defendants have interfered with his possession in respect of Khata No. 131 total measuring 2400 square feet thereby he came to know about the same.

18. The learned counsel for plaintiff with vehemence argued that when the suit is of pure question of fact cannot be dismissed on the rejection of plaint by relying upon the decision in the case of **B. Sumitra Rao and others Vs Snesha and others reported in 2022 (2)**

KCCR 1811. The question of fact does not involve in this case as the plaintiff sought for rectification of sale deed dated 11/09/2006 as to the measurement that itself is a notice about purchase of extent of land and added to which, the vendor of plaintiff had possessed the same extent of land. This suit is not only barred by law as the plaintiff has not sought for rectification of sale deed dated 20/05/1998 but also barred by law of limitation as the suit has been filed after a period of 18 years from the date of mistake i.e., 20/05/1998. The suit for rectification of instrument is barred by law of limitation from the date of knowledge and the said principle is appreciated in the case of **U. Manjunath Rao Vs U. Chandrashekar and another reported in 2021 (1) KCCR 955**. In the instant case as discussed above in paragraph 15 and 16 that, it is clear that “Order 7 Rule 11(d) of CPC, on bearing reading that there is a gap of 18 years from the document dated 20/05/1998 as the said mistake in the measurement occurred. In this regard, it is relevant to rely upon another decision in the case of **DILBOO(DEAD) BY LRS AND OTHERS VS DHANRAJI (DEAD) AND OTHERS REPORTED IN 2007 SUPREME COURT CASES 702** held that “the date of registration of a document will be deemed the date of deemed knowledge **and another judgment reported in the case of Raghavendra Shara Singh vs Ram Prasanna Singh (dead) by Lrs in the matter of Civil Appeal No. 2960/2019 wherein it was held that** “suit for rejection of plaint on the ground of limitation is maintainable that on the ground of challenging the registered instrument was after a period of 22 years and the caution of action is not pleaded properly”. **The**

Hon'ble Supreme court of India by Division Bench has held in paragraph 6.3 that

“the learned Munsiff must remember that if on a meaningful – not formal – reading of plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under order 7 rule 11 of CPC taking care to see that the ground mentioned there is fulfilled and if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under order 10 of CPC. An activist judge is the answer to irresponsible law suits”

and further in paragraph 6.4 held that

“a cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue”

except contending that in the month of August 2016, the defendants interfered with the possession of the Suit property for invoking the limitation. It is so obvious that on the date of registration of sale deed, the measurement conveyed is 40 x 60 feet. The cause of action for the suit arose in the year 2016 but the plaintiff never pleaded anything about from the year 1998 (i.e., why plaintiffs

vendor kept quite) to 2016 (why the plaintiff kept quite from the year 2006 till August 2016) to seek for rectification of sale deed as to the measurement that he has not stated anything about the limitation and the suit averments is apparent that the clever drafting has involved in the suit to bring the suit within purview of the limitation.

19. Without prejudice to the right of parties to suit, can this court consider the application for rejection of plaint at this stage when the case is set out for plaintiff evidence. The power under Order VII Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial and the said principle is appreciated in the matter of **SALEEM BHAI & ORS. VS. STATE OF MAHARASHTRA AND OTHERS REPORTED IN (2003) 1 SCC 557 AND CHURCH OF CHRIST CHARITABLE TRUST & EDUCATIONAL CHARITABLE SOCIETY VS M/S. PONNIAMMAN EDUCATIONAL TRUST REPORTED IN (2012) 8 SCC 706.**

20. The learned counsel for plaintiff has vehemently argued that when the suit is of pure question of fact cannot be dismissed on the rejection of plaint by relying upon the decision in the case of **B. Sumitra Rao and others Vs Snesha and others reported in 2022 (2) KCCR 1811.** The question of fact does not involve in this case as the plaintiff sought for rectification of sale deed

dated 11/09/2006 that itself is a notice about purchase of extent of land and added to which, the vendor of plaintiff had possessed the same extent of land. This suit is not only barred by Section 54 and 55 of transfer of Property Act 1882 as the plaintiff has not sought for rectification of sale deed dated 20/05/1998 but also barred by law of limitation as the suit has been filed after a period of 18 years from the date of alleged mutual mistake i.e., 20/05/1998. This apart, there is no valid cause of action in law for this suit and the suit if considered on the basis of cause of action arises with effect from 20.05.1998 but pleaded all of a sudden, the plaintiff came to know about the mutual mistake only in the year 2016 after a gap of 11 years from the plaintiffs' sale, the same is barred by law of limitation as could be seen from the plaint averments that the suit could be rejected on the point of limitation. Thus, it is apparent from plaint along with the documents appended that the suit is not maintainable in lieu of bar Section 54 and 55 of Transfer of Property Act 1882 and Article 113 of Limitation Act from the date of registration of sale deed itself 20/05/1998 and 11/09/2006. Therefore, this court answers the **POINT NO.1 IN THE AFFIRMATIVE.**

21. POINT NO.2: In view of the above reason and answers stated point No.1, this court proceeds to pass the following;

O R D E R

**I.A.No.10 filed by the defendant
No.1 U/Order 7 Rule 11(d) R/w Sec.
151 of C.P.C is hereby allowed.
Consequently the suit of plaint is
rejected. Office is directed to draw
decree accordingly.**

(Dictated to the Stenographer , transcribed by him and order then, revised and corrected by me, print out taken by him and then pronounced in the open court on this 13th day of June, 2023)

Sd/-

**(SMT. DEEPA V.)
Principal Civil Judge
Tiptur.**